

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Petition for Removal of Caps on)	
High Cost Loop Support filed by)	
)	
Sunflower Telephone Company, Inc. and)	AAD 95-66
Bluestem Telephone Company)	
)	
S&T Telephone Cooperative Association, Inc.)	AAD 96-26
and S&T Communications of Dighton, Inc.)	
)	
Golden Belt Telephone Association, Inc.)	AAD 96-26
)	
Northeast Missouri Rural Telephone Company)	AAD 95-63
and Modern Telecommunications Company)	

CC: 96-45

**PETITION FOR REMOVAL
OF INDIVIDUAL CAPS ON HIGH COST LOOP SUPPORT**

Sunflower Telephone Company, Inc. ("Sunflower") and Bluestem Telephone Company ("Bluestem"); S&T Telephone Cooperative Association, Inc. ("S&T") and S&T Communications of Dighton, Inc. ("S&T-Dighton"); Golden Belt Telephone Association, Inc. ("Golden Belt"); and Northeast Missouri Rural Telephone Company ("Northeast Missouri") and Modern Telecommunications Company ("Modern") (collectively, "the Petitioners"), by their attorneys, respectfully request that the Common Carrier Bureau ("Bureau") remove, as of January 1, 2000, the individual caps placed on their high cost loop support as a condition of various study area waiver orders issued by the Bureau's Accounting and Audits Division ("Division") during 1996. The Petitioners stand in the very same position as the parties that were granted relief from substantially similar high cost support caps in the Bureau's Memorandum Opinion And Order On Reconsideration (Copper Valley Telephone, Inc. et al.), DA 99-1845, released September 9,

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1999 ["Individual High Cost Cap Removal Order"]. Therefore, Petitioners request that the existing caps on the high cost support received by their affected study areas during 1997, 1998 and 1999 be eliminated as of January 1, 2000, and that they thereafter be permitted to calculate and receive high cost loop support on the basis of the average cost of all of their lines in the affected study areas.

BACKGROUND

Petitioners are all rural telephone companies. During 1995 or 1996, they entered into agreements to purchase exchanges in nearby rural areas from large price cap carriers (namely, United Telephone Company affiliates and GTE Midwest Incorporated). In 1995 or 1996, the Petitioners took part in filings with the Commission requesting the study area, price cap and other waivers necessary to complete the transactions. During 1996, the Division granted the requested waivers subject to various conditions. These conditions included: (a) consolidation of the acquired exchanges into an existing study area of the purchaser or affiliated company; and (b) limitation of the annual federal high cost support receivable by the consolidated study area to a specified maximum amount that cannot be exceeded without explicit approval from the Bureau.

Sunflower and Bluestem. Bluestem is a subsidiary of MJD Communications, Inc. ("MJD"). In 1995, Bluestem entered into an agreement to acquire three rural Kansas exchanges from United Telephone Company of Eastern Kansas. On April 28, 1995, Bluestem and MJD requested study area and price cap waivers from the Commission, and proposed to consolidate the three new exchanges into the existing Kansas study area of Sunflower, another MJD subsidiary. On June 14, 1996, the Division adopted a Memorandum Opinion And Order (Bluestem Telephone Company, et al.), AAD 95-66, 7 FCC Rcd 7130 (1996), wherein it granted

the requested waivers and capped the annual high cost loop support to be provided to the consolidated Sunflower/Bluestem study area at \$1,286,392.

S&T and S&T-Dighton. In 1995, S&T-Dighton, a subsidiary of S&T, entered into an agreement to acquire a rural Kansas exchange from United Telephone Company of Kansas. On January 19, 1996, S&T and S&T-Dighton requested study area and price cap waivers from the Commission, and proposed to consolidate the new exchange into S&T's existing Kansas study area. On August 30, 1996, the Division adopted a Memorandum Opinion And Order (Golden Belt Telephone Association, Inc. et al.), AAD 96-26, 11 FCC Rcd 10,165 (1996), wherein it granted the requested waivers and capped the annual high cost loop support to be provided to the consolidated S&T/S&T-Dighton study area at \$2,842,836.

Golden Belt. In 1995, Golden Belt entered into an agreement to acquire the rural Ness City, Kansas exchange from United Telephone Company of Southcentral Kansas. On January 19, 1996, Golden Belt requested study area and price cap waivers from the Commission, and proposed to consolidate the Ness City exchange into its existing Kansas study area. On October 25, 1996, the Division adopted a Memorandum Opinion And Order (Golden Belt Telephone Association, Inc. et al.), AAD 96-26, 11 FCC Rcd 14,409 (1996), wherein it granted the requested waivers and capped the annual high cost loop support to be provided to the expanded Golden Belt study area at \$260,426. Subsequently, on May 29, 1997, Golden Belt requested a second set of study area and price cap waivers from the Commission, in order to acquire the rural Ellis, Kansas exchange from United Telephone Company of Kansas. On October 9, 1997, the Division adopted a Memorandum Opinion And Order (Golden Belt Telephone Association, Inc. et al.), AAD 97-72, 12 FCC Rcd 16,335 (1997), wherein it granted the requested waivers and noted that Golden Belt's annual high cost loop fund draws were estimated to be \$584,433.

Golden Belt believes that the \$260,426 cap established by the Division in its 1996 Ness City order was superseded and eliminated by the Division's acceptance of the higher \$584,433 support level in its 1997 Ellis order. However, because the Division's Ellis order did not expressly eliminate the prior \$260,426 cap or expressly establish a higher cap at \$584,433, Golden Belt is participating in the present petition out of an abundance of caution. Golden Belt asks the Bureau to clarify that the \$260,426 cap no longer exists because it was superseded and eliminated by the 1997 Ellis order or, in the alternative, because it is now eliminated as of January 1, 2001 like other similarly situated caps.

Northeast Missouri and Modern. In 1995, Modern, a subsidiary of Northeast Missouri, entered into an agreement to acquire three rural Missouri exchanges from GTE Midwest Incorporated. On April 19, 1995, Modern and Northeast Missouri requested study area and price cap waivers from the Commission, and requested that the three new exchanges acquired by Modern be placed in a separate Missouri study area. On April 22, 1996, the Division adopted a Memorandum Opinion And Order (GTE Midwest Incorporated et al.), AAD 95-63, 11 FCC Rcd 11,553 (1996). It therein granted the requested waivers, but consolidated the Modern exchanges into Northeast Missouri's existing Missouri study area and capped the annual high cost loop support to be provided to the consolidated Northeast Missouri/Modern study area at \$367,769. Northeast Missouri and Modern have had pending, since May 29, 1996, an Application For Review of the Division's order. They have not dismissed or abandoned the assertions and requests for relief set forth in their Application For Review, and are not doing so now. Rather, out of an abundance of caution, Northeast Missouri and Modern are participating in the present petition in order to ensure, at minimum, that the cap on their annual high cost loop support will

be eliminated as of January 1, 2000, in the same manner as the caps of the similarly situated parties named in the Individual High Cost Cap Removal Order.

Subsequently, Petitioners have acquired the subject rural exchanges and will have operated them for three years or more by January 1, 2000. In most instances, Petitioners have made substantial upgrades to their acquired exchange facilities, and have made substantial additions and improvements to the services offered to the subscribers of those exchanges. Some of the Petitioners have also upgraded the facilities and services of their pre-existing exchanges during this period. To the best of our information and belief, the Commission has received no complaints from state or local government agencies or from local customers alleging deterioration of facilities or services in any of the subject exchanges. In fact, if the Bureau investigated service quality changes in the acquired exchange areas, it would find virtually unanimous local support for the conclusion that service has substantially improved since the Petitioners acquired the subject rural exchanges from the larger price cap carriers that previously operated them.

**PETITIONERS ARE
SIMILARLY SITUATED TO THE PARTIES
RECENTLY RELIEVED OF HIGH COST FUND CAPS**

It has long been established that the Commission must treat similarly situated applicants and petitioners in an equivalent and consistent manner, particularly when they are contemporaneously requesting grant of similar authorizations or relief. At the very minimum, the Commission must explain its different treatment of such similarly situated parties, and may not explain any inconsistency as a change in policy or correction of a previously erroneous ruling when the cases

are decided within close proximity to each other. See Melody Music, Inc. v. FCC, 345 F. 2d 730 (D.C. Cir. 1965); McElroy Electronics Corp. v. FCC, 990 F.2d 1351, 1365 (D.C. Cir. 1993).

In its Individual High Cost Cap Removal Order, the Bureau recently removed the individual high cost loop support caps imposed on various North Dakota, South Dakota, Idaho, Arizona and Vermont rural telephone companies in connection with study area waivers granted by the Division during 1996. Like Petitioners, the parties to the Individual High Cost Cap Removal Order sought and obtained study area waivers in order to acquire nearby rural exchanges from larger price cap carriers. And, like Petitioners, the parties to the Individual High Cost Cap Removal Order were subjected to caps because the Division was concerned that their estimates of high cost loop support impact might later prove inaccurate when planned upgrades were completed.

In the Individual High Cost Cap Removal Order, the Bureau concluded that limiting the North Dakota, South Dakota, Idaho, Arizona and Vermont rural telephone companies, in perpetuity, to the high cost loop support estimated in their original petitions was not necessary to accomplish its policies. The Bureau noted that the caps imposed upon those carriers had been in effect for more than three years (just like the caps imposed upon the Petitioners). The Bureau concluded that “in that time, the individual caps placed on the carriers’ high cost loop support have served their purpose by preventing the carriers from underestimating the effect the transfer of exchanges would have on the high cost loop support mechanism immediately following the transfer.” Id. at para. 10. In addition, the Bureau stated that “caps of unlimited duration may hinder [the] incentive and ability [of rural telephone companies] to extend service to previously unserved areas, as well as to upgrade service to their existing customers.” Id.

The very same circumstances and reasoning apply to the Petitioners. Their individual high cost loop support caps also were imposed by Division orders adopted during 1996, and likewise have been in effect for more than three years. During that time, the caps have served the Division's purpose by forcing Petitioners to live with their pre-transaction estimates of the impact of their exchange acquisitions upon the high cost loop support mechanism immediately following the transfer. However, three years of capped high cost loop support is more than sufficient to satisfy the Division's goals in the Kansas and Missouri study areas of the Petitioners, just as three years was sufficient with respect to the study areas of the parties to the Individual High Cost Cap Removal Order. Moreover, the increasing bite of their individual caps (in addition to the now six-year old "interim" cap on the aggregate high cost loop support mechanism) is hindering the ability of the Petitioners to provide and upgrade service to their existing customers and will do so increasingly in the future. There is no reason to extend the duration of any of these individual high cost loop support caps beyond December 31, 1999.

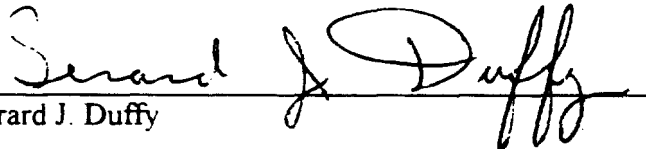
In the event that the Bureau does not issue an order granting the requested relief prior to January 1, 2000, the Petitioners request that the Bureau declare any subsequent order to be effective retroactive to January 1, 2000. Otherwise, the Petitioners will be treated in a significantly less favorable manner than the parties to the Individual High Cost Cap Removal Order solely due to the happenstance of the release date of their requested order. A retroactive effective date would be consistent with other Bureau decisions making effective dates retroactive in order to provide sufficient universal service support to rural carriers, and to reduce the regulatory burdens on small telephone companies. See, e.g., Order on Reconsideration (Vermont Telephone Company), 14 FCC Rcd. 826 (1998) (establishing a retroactive effective date over five months prior to release of the original order); Memorandum Opinion and Order (TelAlaska, Inc.), 13 FCC Rcd. 22,729 (1998) (modifying high cost support retroactively to a date prior to the filing of the petition).

CONCLUSION

Sunflower and Bluestem, S&T and S&T-Dighton, and Northeast Missouri and Modern respectfully request that the Bureau remove the individual caps on their high cost loop support as of January 1, 2000, and calculate and distribute their high cost loop support after that date on the basis of the average cost of all of their lines in the affected study areas. Likewise, if there is still a cap on its high cost loop support, Golden Belt requests that such cap be removed as of January 1, 2000. In other words, the Petitioners request substantially the same relief recently afforded by the Bureau to the similarly situated companies in the Individual High Cost Cap Removal Order. Finally, in the event that the Bureau does not issue an order granting the Petitioners' requests until after January 1, 2000, they respectfully request that any subsequent order removing their individual caps be made retroactive to January 1, 2000.

Respectfully submitted,

**SUNFLOWER TELEPHONE COMPANY, INC.
BLUESTEM TELEPHONE COMPANY
S&T TELEPHONE COOPERATIVE ASSOCIATION, INC.
S&T COMMUNICATIONS OF DIGHTON, INC.
GOLDEN BELT TELEPHONE ASSOCIATION, INC.
NORTHEAST MISSOURI RURAL TELEPHONE
COMPANY
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Date: November 4, 1999

CERTIFICATE OF SERVICE

I, Michael B. Adams, Jr., hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Jackson & Dickens and that a copy of the foregoing **"PETITION FOR REMOVAL OF INDIVIDUAL CAPS ON HIGH COST LOOP SUPPORT"** was served this 4th day of November, 1999, by messenger to the persons listed below.

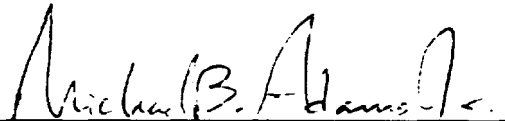
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